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LIABILITY FOR INJURIES FROM REVOLVING OR SWINGING DOORS

One injured while attempting to pass through a revolving door by the excessive speed of the door was held, in Buzzell v. White Company (220 Mass. 129, 107 N. E. 385), not to be entitled to recover against the owner. The fact that the rubber strips on the edge of the wings of the door were somewhat worn was held not to amount to negligence rendering the owner liable to the person using the door, where the purpose of the strips in their contact with the casing was not to retard the speed of the door, but to prevent the passing of air. It was held in this case that failure to equip the door with a device to control its speed, even though revolving doors are sometimes equipped with such a device, did not amount to negligence, where it appeared that the manufacturer of the door in question makes ninety per cent of the revolving doors in this country, and not more than two out of ninety have a governing device.

On the other hand, in Hochschild v. Cecil (131 Md. 70, 101 Atl. 700), where the negligence charged was that the defendant storekeeper failed to perform the duty of providing for the safety of his customers by "having proper friction strips attached to the said door, which strips were not properly attached, but the said strips had been worn, so that the door revolved with dangerous ease and rapidity, with which it should not have revolved," and the evidence showed that the door was of an obsolete type, built in such a manner as to be likely to revolve rapidly, and that the friction strips were not properly attached so as to prevent it from so revolving, a judgment in favor of the plaintiff, who was injured in the door, was upheld.

It has also been held in Massachusetts that where a revolving door was equipped with friction strips to prevent the excessive revolutions, and the owner failed to inspect the same for a period of three years, and the friction strips became worn, so as to scarcely retard the door, the owner was guilty of negligence rendering him liable to a customer for consequent injuries. This was the case of Norton v. Chandler & Co. (221 Mass. 99, 108 N. E. 897), in which it was also held that the fact that the rapid turning of the door by which the plaintiff was injured was caused by another person passing through rapidly, did not affect defendant's liability, as such action might reasonably have been anticipated.

A customer of a store whose hand was caught between the door and frame of an ordinary swinging door at the store entrance, which was maintained without keepers, when released by a preceding customer, was held not to be entitled to recover from the storekeeper (Smith v. Johnson, 219 Mass. 142, 106 N. E. 604). The Buzzell case, supra, holds that the fact that there are no attendants at a revolving door at the entrance of a store does not indicate negligence on the part of the owner.

The proprietor of a store was held not to be liable to a customer who was injured by being knocked down by the return swing of a door, released by a person who was walking ahead of her, it appearing that there was nothing in the construction or operation of such doors which made them dangerous to customers, providing ordinary care is used, as such doors are in general use in like establishments. (Pardington v. Abraham, 93 Appellate Division, 359, 87 New York Sup. 670, affirmed in 183 New York 553, 76 N. E. 1102.)

In an action to recover for injuries, incurred when the plaintiff was struck by a swinging door as he was leaving the defendant's department store, it was held that the trial court was in error in sustaining a demurrer to the declaration, which

alleged that the defendant maintained a lobby extending into the public street, the entrance to which was through heavy swinging doors constructed of plate glass and timber, to which were attached powerful springs, causing the doors to spring back and forth with unreasonable violence and rapidity, and that the plaintiff, in the store on invitation, was injured in passing out when one of the doors was violently set in motion by reason of the strong spring wrongfully and negligently attached thereto, and that the defendant had failed to construct and maintain the doors to make them reasonably safe for persons using them (Sehnert v. Schipper & Block, 168 Ill. App. 245, subsequent appeal in 193 Ill. App. 202).

So, in Ford v. John Wannamaker (165 App. Div. 284, 150 N. Y. Sup. 795) it was held that the proprietor of a store may be found guilty of negligence in maintaining a swinging door close to an aisle or passageway in the store leading to counters where goods are displayed for sale, which, when opened, comes within seven inches of the counter, and to be liable to a shopper who was struck by the door while passing close to the counter, even though there is evidence tending to show that the door was swung by a third person. (For note on this subject, see 33 A. L. R. 225.)

JAMES M. BECK'S PHANTASY

That there is no room under the genius of the Government of the United States for a partnership between the three Departments of Government need not be more than emphasized as a premise for a thesis. That this truth applies peculiarly to the Constitutional relations between the Judicial and the Legislative cannot be doubted by any intelligent reader of the debates in the Constitutional Convention at Philadelphia. Indeed there was a movement to coalesce the Judicial and Executive Departments for mutual protection against the all powerful Legislative. That the fear was entertained and the plan of protection was sponsored by two such men as James Wilson, of Pennsylvania, and James Madison, of Virginia, gives reason for pause if not for conviction.

That James M. Beck should have had a question in his mind as to "The future of the United States Supreme Court," which he emphasized as the subject of his address, is a regrettable circumstance. That Great Tribunal has and always will command the love, respect and veneration of the American people, with rare and conspicuous exceptions. He exposes a latent pessimism not heretofore suspected. It is a pardonable phantasy in the eventide of a very able and active lawyer.

That he should have harbored the delusion of a partnership between the Judicial and Legislative Department whereby the former would, upon request, become general counsel to Congress, constrains one to inquire after the memory of the learned Solicitor General for James M. Beck's erudition is not to be questioned. Maybe after all it was just a postprandial activity.

But it served a useful purpose in drawing from the quiet of his historical studies Hampton L. Carson, that defender and expounder of the spirit and genius of the great American Republic whose voice has ever been true. His criticism of Mr. Beck's suggestion is a masterpiece of rhetoric, history and philosophy. It is the Constitutionalist at his best. In its presence, any other response to Mr. Beck would be lacking in sincerity and usefulness. His exhaustive analysis and refutation of Mr. Beck's surprising theories will live long. It will prove to be a mine of information to those thoughtful persons who seek the true light that guided the Founders in their wonderful constructive work. We started out to suggest that it be read. We conclude by begging that it be read.

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NOTES OF IMPORTANT DECISIONS

LIABILITY OF BAILEE FOR LOSS BY FIRE.—In the case of Davis v. Rivers, 229 Pac. 571, decided by the Supreme Court of Oklahoma, the plaintiff sought to recover for the loss of goods which he had delivered to a common carrier for transportation, alleging that they were destroyed by fire and that the fire was occasioned by the negligence of the carrier. The following opinion of the court contains the facts and a discussion of the law applicable thereto:

"Defendant assigns nine specifications of error and argues the same under five heads, viz.: First, error in overruling defendant's demurrer to plaintiff's evidence; second, failure to direct a verdict for defendant; third, refusal to give certain instructions requested by defendant; fourth, verdict not sustained by sufficient evidence and contrary to law; fifth, verdict contrary to law and to instructions of the court; error in the assessment of the amount of recovery—same being too large, excessive damages appearing to have been given under the influence of passion and prejudice.

"The evidence of the plaintiff discloses he loaded a car with livestock in one end and erected a partition to separate the stock from the other part of the car; that one end of the car was loaded with household goods, and in the middle of the car, between the doors, there was livestock feed consisting of hay, oats and 'corn in the shuck'; that there was a lantern sitting on the floor of the car where the corn, hay and oats were loaded, but it was not burning; that the car was in charge of one Kimble, agent of the plaintiff; that the car reached Okmulgee about 5:30 p. m. on December 10, 1918, and Kimble left the car door open and went 'up town' and did not return until after 7 p. m. and after he was told the car was afire; that the car was not consumed, but the fire was confined entirely to the inside of the car.

"This is the sum total of the evidence relative to the origin of the fire, and as the plaintiff alleges the fire was caused by the carelessness and negligence of the defendant the burden of proof was upon the plaintiff to establish by competent evidence the acts of negligence of the defendant or some facts from which an inference of negligence could reasonably be drawn.

"Ordinarily a common carrier which receives goods for shipment is required to deliver the goods according to its agreement, yet, when the owner of the goods or his agent accompanies them, the general liability of the defendant is limited to the extent that the carrier is in no sense responsible for any injury or loss of the goods that may occur through the act of the owner or his agent. Then, as to that phase of the case, the whole question would turn upon whether or not the defendant was in any way responsible for the fire, or whether the owner's agent, who was in charge of the goods, was responsible. If the plaintiff had not pleaded negligence and had stood squarely on the bailment, a different question would have been presented, but having pleaded that the loss was occasioned by fire through the negligence of the defendant the burden was upon the plaintiff to prove that fact (6 Cyc., 379; Hart v. Railroad, 69 Iowa, 485, 29 N. W. 597; Nunnelee v. St. L., I. M. & S. Ry., 145 Mo. App., 17, 129 S. W. 762).

"In Stone v. Case (34 Okl. 5) the action was predicated upon the negligence of the defendant in causing a fire wherein the piano of the plaintiff was destroyed, the piano having been leased to the defendant by the plaintiff, and this court, speaking through Harrison, J., said:

" 'In the second count, if a cause of action is stated at all, the plaintiff's right of recovery is predicated solely upon defendant's negligence. It states a condition of facts which relieves defendant of the presumption of negligence ordinarily arising from a prima facie case of failure to return the property. It alleges that the loss was caused by fire and that the fire was caused by defendant's negligence. In alleging a loss by fire the defendant was relieved of the presumption of negligence, and in alleging that the fire was caused by negligence plaintiff assumed the burden of proving such negligence. Her right of recovery is based upon defendant's negligence. She must prove this negligence in order to fix a liability on him. For, under the great weight of authority and under the light of reason, where the loss of bailor's property is occasioned by fire, robbery, burglary or theft, or by any means which would ordinarily and reasonably seem to be unavoidable, the bailee is relieved of the presumption of negligence in the loss and of the consequent burden of interposing an affirmative defense.'

"The court then cites with approval Wilson v. Southern Pacific Ry. (62 Cal., 164), as follows:

" 'A prima facie case of negligence is made out against a warehouseman who refuses to deliver property stored with him upon proof of demand and refusal. Upon such proof alone the burden is on him to account for the

property; otherwise he shall be deemed to have converted it to his own use. But if it appears that the property when demanded was consumed by fire, the burden of proof is then on the bailor to show that the fire was the result of the negligence of the warehouseman (Harris v. Packwood, 3 Taunt., 264; Beardslee v. Richardson, 11 Wend., N. Y., 26, 25 Am. Dec., 596); Browne v. Johnson, 29 Tex., 43; Lamb v. Camden & Amboy Ry., 46 N. Y., 271, 7 Am. Rep. 327; Jackson v. Sac, Val. Ry., 23 Cal., 269). The negligence of the appellant, as the proximate cause of the loss of the property by fire, thus became the essential fact to recovery, and the burden of proof was upon the plaintiff in the action. It was incumbent on him to prove that the defendant had, by some act of omission, violated some duty, by reason of which the fire originated, or that some negligence or want of care, such as a prudent man would take under similar circumstances of his own property, caused or permitted or contributed to cause or permit the fire by which the property was destroyed. * * *

"Judge Story, in his work on Bailments (8th ed., sec. 210), says: 'With certain exceptions, which will hereafter be taken notice of, as to innkeepers and common carriers, it would seem that the burden of the proof of negligence is on the bailor, and proof merely of the loss is not sufficient to put the bailee on his defense.' 'This has been ruled in a case against a depositary for hire, where the goods bailed were stolen by his servant.' Section 410-a. 'Properly understood, it seems to be clear that the burden of proof must always be upon the plaintiff to make out all the facts upon which his case rests, and, as negligence is the foundation of the action between bailor and bailee, that the duty of proving such negligence is on the former, rather than that of disproving it on the latter. That the burden is on the plaintiff in other cases founded on negligence is now quite generally agreed. * * * Negligence is no more to be presumed in such cases than in any other.' There is some discrepancy in the cases, but 'the best-considered modern authorities in which the question has been most directly discussed and decided, support the views above expressed' (Story, Bailm., secs. 213, 278, 339, 454, and authorities, notes 3, 4). 'All bailees, with or without a special contract are prima facie excused when they show loss or injury by act of God or of public enemies, and ordinary bailees in a variety of lesser instances, such as fire, loss by mobs or robbery. (Wilson v. Southern City R. R., 62 Cal., 164, supra, as to loss by fire; 3 Am. & Eng. Enc. Law, pp. 750, 751, and cases cited). Negligence is an affirmative fact, to be established by proof (Ruttledge v. Railway Co., 123 Mo., 121, 24 S. W. 1053). The burden of sustaining the affirmative of an issue involved in an action is upon the party alleging the facts constituting the issue (Heinemann v. Heard, 62 N. Y., 448). The appellant asked the court to instruct the jury that the burden as to negligence was on the plaintiffs, which he refused to do. This was error. For the errors indicated, the judgment is reversed, and the cause remanded for a new trial.'

"Standard Marine Ins. Co., Lim., for Liverpool v. Traders Compress Co. (46 Okl., 356, 148 Pac. 1019), it is held:

" 'In an action against a bailee for hire for injury to cotton, where it is alleged that the injury was occasioned by fire and that such fire was caused by the negligence of the bailee, the court properly instructed the jury that the burden of proof was upon the plaintiff to prove that the fire was caused by the defendant's negligence.'

"The plaintiff having wholly failed to prove negligence on the part of the defendant or any facts from which any inference could be reasonably drawn that defendant was guilty of negligence, the demurrer of the defendant to the evidence of the plaintiff should have been sustained and the court erred in overruling the same."

TRUCK DRIVER MAY NOT ASSUME THAT THREE-YEAR-OLD CHILD WILL NOT RUN IN FRONT OF TRUCK.—While a truck driver is justified in assuming that adults will not run in front of his truck when the same is approaching them a few feet away, it is held in Pisarek v. Singer Talking Machine Company, 200 N. W. 675, decided by the Supreme Court of Wisconsin, that he is not justified in any such assumption in the case of a three-year-old child. On this point we quote briefly from the opinion of the court as follows:

"Were they adults, he might have assumed that they would not attempt to cross in front of the truck. But they were not adults. They were small children, three years of age. Children of this tender age do not act as adults do, and it is proverbial among automobile drivers that one can never tell what children in a street will do. They exercise neither caution nor judgment, for these are faculties which children of that tender age have not acquired. They act upon intuition and impulse, and are apt to do most unexpected things. It cannot be said as a matter of law that the driver of the truck should not have anticipated conduct

on the part of one or both of these children similar to that of the plaintiff. Whether he should have so anticipated is a jury question. The jury having found negligence on the part of the driver of the truck, that such negligence constituted the proximate cause of the injury, and no complaint being made as to the manner of the submission of the question to the jury, the judgment should not have been disturbed by the circuit court, on the ground that there was not sufficient evidence to support it."

AUTOMOBILE IN "OPERATION" ON HIGHWAY WHEN STANDING STILL.—The Court of Appeals of Kentucky, in Hardware Mut. Casualty Co. v. Union Transfer & Storage Co., 266 S. W. 362, holds that a truck parked on a highway for the purpose of unloading furniture, is in "operation," within a statute requiring lights on trucks when in operation, etc. In part the court said:

"It is insisted that these trucks, when parked upon the roadside, were not in operation within the meaning of the statute. They were loaded with furniture or other property which the appellee had transported for Gardner, and these trucks were then parked at this point for the purpose of being unloaded, and while so being used, they were 'in operation' within the meaning of the statute.

"That this was the intention of the Legislature is clearly shown from subsection 3 of section 2738g24, because in this subsection the Legislature provided that—

" 'Cities or towns may by ordinance designate certain well-lighted streets or parts thereof during certain periods as being sufficiently illuminated to make lights on parked automobiles unnecessary, in which case paragraphs 1 and 2 shall not apply to automobiles parked in such streets during such period.'

"From this language it is obvious that a motor vehicle, when parked on the highway, is in operation within the meaning of the statute.

"In Commonwealth v. Henry, 229 Mass. 19, 118 N. E. 224, L. R. A. 1918B, 827, it was held that an automobile standing on a city street after dark, with engine at rest, is within a statute prohibiting the operation of automobiles on the streets after dark without lights.

"A similar conclusion was reached in Jaquith v. Worden (1913), 73 Wash. 349, 132 P. 33, 48 L. R. A. (N. S.), 827, where the court decided that an automobile, when stopped or left standing in the highway, did not cease to be 'driven' within the meaning of a statute providing that 'every automobile or motor vehicle when driven on any public road' between certain hours should have 'at least one lighted lamp, showing white to the front and red to the rear.' It was stated that it could not be said that the driver of such a vehicle must carry lights while it is moving, but that he may stop it during the hours of darkness in the roadway, turn off the lights, and leave it standing, without violating the law; that the statute must be read with reference to its plain spirit and intent; that its spirit cannot be destroyed by narrowing it to the literal meaning of a single word; that highways are designed for travel in all lawful ways; and that the driver of a vehicle does not cease to be a driver or traveler when he stops his machine in the street."

NEGLIGENCE PRESUMED FROM INJURY OF STREET CAR PASSENGER BY CLOSING OF AUTOMATIC DOOR.—The Court of Appeals of Alabama, in the case of Bradley v. Williams, 101 So. 808, holds that where the plaintiff was injured by being caught in an automatic door while attempting to board a street car, at the implied invitation of the defendant, the latter has the burden of disproving negligence under the doctrine of res ipsa loquitur, after the plaintiff has made a prima facie case. The defendant asked the court to give the following instruction:

"I charge you, gentlemen of the jury, that it is the duty of the plaintiff to reasonably satisfy you from the evidence that the injury or damage complained of was proximately caused by the negligence of the street car company, and if after consideration of the testimony you are not so reasonably convinced of such negligence on the part of the defendant proximately causing the injury in question, then you cannot find for the plaintiff."

The trial court refused to give the instruction, and on appeal the court said:

"The defendant insists that the court committed error in refusing to give at its request charge 6, and the contention is made by the appellee that the charge was not error for that burden of acquitting itself of negligence rests on defendant. Ordinarily, the charge is a correct instruction. But where the accident is res ipsa loquitur a different rule obtains. In the instant case the facts show that the injury occurred by reason of an agency of defendant within the car and peculiarly within the defendant's power. In such a case, if plaintiff was a passenger, the defendant can be presumed, without proof, to have acted negligently. This would cast upon the defendant

the burden of disproving negligence. 3 Hutchinson on Carriers, pp. 1705, 1706, pp. 1414, 1415; W. Ry. of Ala. v. McGraw, 183 Ala. 220, 62 So. 772. This would not relieve the plaintiff of the burden resting on him to prove a prima facie case which cast upon the defendant the burden of rebuttal. If this latter statement is the meaning of the charge, then it was covered by the court in its general charge as follows:

"'The plaintiff claims * * * damages for injuries claimed to have been suffered by her by reason of the negligence of defendant while she was a passenger on one of their cars. The claim in the first count is that the injuries were proximately caused by the negligence of the agents or employees of the defendant while she acting within the line and scope of their authority. * * * The burden of proof is on the plaintiff to make out her case before she can recover and before the defendant has to put any witness on the stand.'"

EXECUTION OF OBLIGATION TO PAY MONEY TAKEN AS CONFESSED

Statutes of many states provide that when any petition or other pleading shall be founded upon any instrument in writing charged to have been executed by the other party and not alleged therein to be lost or destroyed, the execution of such instrument shall be adjudged confessed, unless the party charged to have executed the same deny the execution thereof by answer or replication verified by affidavit.[1]

In Smith Company v. Rembaugh[2] the suit was founded on a promissory note, alleged in the petition to have been executed by defendant to plaintiff. The answer was a general denial, not verified by affidavit. Plaintiff moved the court for judgment notwithstanding the answer, as it tendered no matter of defense, not having been sworn to. The court sustained the motion, and rendered judgment accordingly. In sustaining the action of the trial court, says Phillips, P. J.:

"Clearly, therefore, under the answer interposed by defendant he was precluded from introducing any proof, the tendency of which would be to call in question the execution of the note, for it stood confessed. What other possible defense, then, was open to him under the general denial? He could not prove payment nor failure consideration, nor any other fact supervening since the making of the note, for these would be new matters to be specially pleaded."

From the foregoing decision it must be concluded that an unverified denial under the language of the statute does not tender issue.

Section 2160[3] provides that all instruments of writing made and signed by any person or his agent, whereby he shall promise to pay to any other or his order any sum of money or property therein mentioned shall import a consideration. Under this section it would not be necessary to introduce evidence that there had been in fact a consideration. A difficult question might arise where the plaintiff's petition alleged that a valuable consideration in fact had been given. It would seem on principle that such assertion of fact would create an issue under the unverified denial since the pleader apparently did not seek to avail himself of the presumption created by the statute, but challenged the defendant on the fact of consideration. A handy solution of this difficulty might be arrived at by treating the statement of consideration as surplusage. Such was the view taken in Johnson et al. v. Sovereign Camp Woodmen of the World,[4] but the decision was put upon the ground that the words "valuable consideration" did not state an issuable fact, but only a conclusion of law, and reliance could be had upon the statutory presumption by disregarding the alleged language.

The second question is whether the word "execution" includes "delivery" or whether the statute dispenses with proof of delivery when the execution of the instrument sued on is not denied under oath.

(1) Rev. Stat. Mo. 1919, Sec. 1415.
(2) 21 Mo. App. 390.
(3) Rev. Stat. Mo. 1919.
(4) 119 Mo. App. 98; 95 S. W. 952.

In Hammerslaugh v. Cheatham,[5] it was held that the execution of a deed did not include delivery, though the point was made that the answer not being verified confessed the execution. In Hart v. Harrison Wire Co.[6] it was held that by failing to deny the execution by answer or replication verified by affidavit the party admits the genuineness of the signatures and also delivery of the instrument, the signing and delivery being included in the execution.

In 1915 (Laws Mo., p. 243) the Negotiable Instruments Act was adopted in this state. The purpose was to revise and codify the law concerning negotiable instruments and to establish a uniform law with that of other states, repealing all acts and parts of acts not consistent with such act. It is provided therein[7] * * *

"But where the instrument is in the hands of the holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery to him is presumed until the contrary is proved."

The same difficulty is encountered here in respect of delivery as was met in the case of expressly pleading consideration where one was imported. Hence if the facts alleged bring the case under the above provision delivery need not be averred, but if delivery be expressly averred, a nice question is presented as to whether the unverified denial will make such fact issuable. It seems not, for the reason that the office of the denial is to put in issue only material facts, and if a fact be alleged which is not material because the law will supply it, the denial cannot put such asserted fact in issue. It was held in Haughton v. Jacobs[8] that possession of a promissory note by the payee raises a rebuttable presumption of delivery, though the law was well settled on that point long before the Negotiable Instruments Act was passed.[9]

The unverified denial will reach any fact alleged in the plaintiff's petition which is necessary for him to prove in order to make a case. Thus a petition on a promissory note alleged that it was made and delivered to the plaintiff, Emily Saville, in the name of Marsh Saville, and that she was at the time of its execution and delivery the owner thereof, and the debt for which it was executed and has ever since been the legal holder. The answer was a general denial coupled with a denial of the execution that was not verified as the statute requires.

The court gave judgment for the plaintiff on the pleadings. This was held to be error as the note was given to Marsh Saville, plaintiff's ownership was put in issue by the general denial.[10] In Cavitt v. Thorp[11] it was held that possession of an unindorsed promissory note by one other than the payee is no evidence of ownership in the holder. In Worrell v. Roberts[12] it was held that a general denial in an action on a promissory note by an alleged indorsee thereof puts in issue the plaintiff's title to the note and the genuineness of the indorsement.

The case of North St. Louis Building and Loan Association v. Obert[13] presented a novel question. The suit was on a bond and the answer was unverified. The bond when offered in evidence showed that it had not been signed. According to the statute, the execution stood confessed. Say the court:

"But we have never yet decided that when the plaintiff himself produces in evidence the instrument sued on, and it shows on its face that it has not been signed, the statute requires us to say that it has been signed, or that the fact of its execution is immaterial. Proof of execution may be

(5) 84 Mo. 1.
(6) 91 Mo. 414; 4 S. W. 123, l. c. 126.
(7) Rev. Stat. Mo. 1919, Sec. 803.
(8) 246 S. W. 285 (Mo. Sup.).
(9) Norton Bill and Notes (4th Ed.), Sec. 131, p. 458.
(10) Saville v. Huffstetter, 69 Mo. App. 273.
(11) 30 Mo. App. 131.
(12) 58 Mo. App. 197.
(13) 169 Mo. 507; 69 S. W. 1044.

waived, but the fact of execution is still essential."

What has become of the old rule that plaintiff must show title? Must the plaintiff still show, statutes and rules of pleading to the contrary notwithstanding, title in the subject matter, and if so, how may it be done? Where the denial is unverified and the instrument is in the hands of the original holder, it would seem theoretically at least, to be necessary to show the identity of the payee with the plaintiff, and some proof ought to be offered on this score.

In Smith Company v. Rembaugh, supra, judgment was rendered on the pleadings where there was an unverified denial, though the case is silent on whether the note was produced and offered in evidence. This seems to be essential, and it was held in Taylor v. Fuqua,[14] that though the notes were annexed to the petition as exhibits and were referred to in the testimony, they were not offered in evidence, and a judgment based upon them had no foundation upon which to stand. It would seem therefore that the Smith case was erroneously decided, since the plaintiff must show that he is the holder of the note. This may be done by producing the same and offering it in evidence and then the presumption both of identity of person between payee and plaintiff, and regularity of holding will establish title in plaintiff, sufficient to support a judgment. It would seem that where the note is pleaded by copy, although verified as required by statute,[15] that judgment on the pleadings could not be rendered, first because the statement in the petition that the copy is a verified copy is an allegation of fact, and put in issue, and secondly, because there is no proof of any kind upon which the court can seize to sustain the presumption of identity of person with that of payee, and regularity of holding.

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(14) 219 S. W. 971, l. c. 972.

(15) Sec. 1270 Rev. Stat. Mo. 1919.

A CASE ILLUSTRATIVE OF THE LAW'S DELAYS AND UNCERTAINTIES

On July 27, 1916, the Governor of the State of Colorado issued an executive order removing one M. P. Capp from the office of warden of the state reformatory. The removal was for cause, upon a hearing, and in every sense valid.

After the issuance of the order, and on the same day, the Governor appointed one R. L. Shaw to fill the vacancy caused by the removal. On receipt of his commission, which was evidence of his title, Shaw made demand upon Capp for the possession of the office. The demand was refused. Although Capp has been "removed" he was still in possession of the office, and retained physical possession thereof and of its appurtenances, notwithstanding the Governor's order and Shaw's demand.

The Governor's order, valid as it was, remained disobeyed and defied. Possibly the Governor could have used the militia to enforce his order, but he chose to resort to the courts, acting in conformity to the opinion of the Supreme Court in Re Fire, etc., Commissioners,[1] where it was said that "in this way a speedy and peaceful result can be reached, and the person entitled to the office installed therein without disturbance or delay." How "speedy" the result was will be noted.

The Governor instructed the District Attorney in quo warranto on behalf of the state to oust Capp and install Shaw in the office. The instructions were obeyed, as provided by the code provisions regarding actions for the usurpation of an office. Complaint was filed in the District Court of the county where the office involved was located. The action was instituted on July 6, 1921. After the disposition of motions made by counsel for Capp, possibly for purposes of delay, a

(1) 19 Colo. 482, 503.

trial was reached and had, resulting in the court finding the issues for the people on October 10, 1916. Judgment ousting Capp and installing Shaw in the office was entered some time prior to October 24, 1916.

On the day last above mentioned, Capp filed a statement of the nature of the case with the clerk of the Supreme Court. The case was thereupon docketed in the Supreme Court, and that court immediately granted a stay of execution for sixty-six days, "sixty days from October 30th," without any notice to the adverse party.

A stay of execution or of the judgment is granted on the theory that it will further the ends of justice and protect the rights of the parties. It is obvious that it never can have that effect in a case involving the removal of the officer, unless it becomes finally determined that the removal was illegal. In every case the stay of judgment is bound to have the same effect as a reversal of the judgment of removal, so long as the stay is in force.

The rules of the Supreme Court and also the code provide that the stay shall be upon terms. The "terms" imposed in the case in question were that Capp furnish a bond in the sum of fifty dollars, which sum was payable only as damages in the event that his application for a supersedeas should be denied.

The compensation provided by law for the warden of the state reformatory consisted of a salary of $2,500 per year and maintenance at the institution. The compensation was probably the equivalent of about $325 per month, or nearly $700 for the period of time during which the judgment was stayed by the first order of the Supreme Court. There was no protection for Shaw in the matter of his receiving the salary and the maintenance appurtenant to the office.

In this case the stay of the judgment accomplished nothing in the way of protecting the rights of Shaw. He being out of the possession of the office, the officers of the state who disbursed the salary of the office refused to pay it to him. The stay rendered the Governor powerless to enforce his order of removal, or to exercise his constitutional right to remove officers for cause, and it rendered the District Court helpless in making effective its judgment. The result was that conditions were the same as if the judgment of the Trial Court had been in favor of Capp. The stay of the judgment nullified Shaw's victory in the District Court. The stay, being for such a long period of time, avoided the necessity on the part of Capp to make a prompt application for a supersedeas, on the consideration of which the court had the power to deny the same and affirm the judgment below.

On December 27, 1916, the Supreme Court granted a supersedeas. That had no different effect than did the stay of the judgment; it merely prolonged such stay during the pendency of the case in the Supreme Court. It did not protect Shaw in his right to the salary and the maintenance belonging to the office. No order was made taking care of that matter. The court refused to restrain Capp from collecting the salary. The supersedeas bond merely provided that it be void if Capp pay the costs adjudged against him, and such damages as might be awarded by the Supreme Court, not such damages as Shaw might sustain by reason of being deprived of the possession of his office, which could, and did amount to approximately $3,000.

If the salary was paid to Capp in the meantime, Shaw could not recover it from the state because the state need not pay it twice.[2] While Shaw could invoke the rule,[3] that "payment to a person who is merely an intruder, or to a de facto officer who has been judicially determined not to be the de jure officer, will not be a defense in an action brought by the de jure officer

(2) Thompson v. Denver, 61 Colo. 470, 158 Pac. 309. Ann. Cas. 1918B, 915; Board of Capitol Mgrs. v. Rusan, 72 Colo. 197, 210 Pac. 328.

(3) Stated in 29 Cyc. 1430.

for his salary," he could have no assurance that such rule would be applied by the Colorado courts, or else the court might hold that it was not "judicially determined" that he was the de jure officer so long as the judgment of the District Court was stayed.

The stay of the judgment and the supersedeas had all the effect of a reversal of the judgment. The officer who had been "removed" by the Governor for cause and upon a hearing was still in the possession of the office notwithstanding the removal and notwithstanding the judgment of ouster rendered by the District Court, and the disbursing officers of the state ultimately paid him the salary of the office during the time he was a usurper only. The appointee and de jure officer, Shaw, continued to remain excluded from the possession of his office, and his salary never was paid to him, nor was he ever compensated for the loss of the maintenance which is appurtenant to the office. The term of office was nearing its end, and did end before the termination of the supersedeas, or before the final judgment in the case.

In April, 1917, the term of the office expired. The supersedeas was still in force; the de jure officer was still excluded. The Governor's order which could not theretofore be enforced would thenceforth be unavailing. About six months after the expiration of the term of the office and on October 8, 1917, the Supreme Court for the first time announced a decision and filed an opinion in the case. Its decision then was (1) that Capp had been legally removed on July 27, 1916, and (2) that Shaw had never qualified for the office.

If Capp had been removed, then under well settled rules regarding appellate procedure, he was not entitled to allege error in the trial court's ruling that Shaw was his successor in office. There was, in fact, no error on the part of the trial court in that respect, and the opinion of the Supreme Court on that point was changed upon the filing of a second opinion.

The second opinion was filed February 4, 1918. It became the final opinion of the court. Its filing took place nearly two years after the time of Capp's removal by the Governor, and about sixteen months after the date of the judgment of the trial court, and nearly a year after the term of the office had expired. Such was the "speedy result" of the procedure recommended in Re Fire, etc., Commissioners, supra.

Upon the question of Shaw's title, the court in its last opinion said:

"This court takes judicial notice that the term of office for which Shaw claims to have been appointed has long since expired. It is therefore unnecessary for us to consider this last-mentioned contention, and we express no opinion upon it."[4]

The same thing could have been said, with as much propriety, in the original opinion of October 8, 1917, for the term of office had expired even prior to that time. Yet in the original opinion the court found fault with Shaw's title because he did not produce at the trial authenticated copies of his oath and bond. He did, however, produce his commission, the highest and best evidence of title to the office.[5] If the question was moot when the court could find no fault with Shaw's title, it ought to have been considered moot at the time the court did find such fault. Again, if the question of Shaw's title was no longer to be considered, it seems that the judgment of the trial court regarding such title ought not to have been disturbed, yet the court did disturb it in that it affirmed only that part of the judgment ousting Capp and incorporated such language into the final opinion as to make it doubtful whether

(4) Capp v. People, 170 Pac. 399.

(5) Cameron v. Parker, 38 Pac. 27; Touart v. State, 173 Ala. 473, 467, 56 So. 211; Sec. 117 Mechem on Public Officers.

in any action by Shaw against Capp for the salary, or by Shaw against the state, Shaw's title could be held res judicata by reason of the judgment of the District Court.

Another remarkable feature of the original opinion of October 8, 1917, was that the court ordered the costs to be "divided equally between the parties." It was an action brought by the people, and costs are not taxable against the people. They are not even taxable against a relator.[6] If the court intended that Shaw should bear a part of Capp's expenses in the effort to keep Shaw from the possession of the office, the fact also is that Shaw was not a party litigant, nor the relator. The first opinion was modified, and corrected by the court in the matter just mentioned.

The litigation above discussed is now probably forgotten by all except those concerned in it. While many years have passed, the "removed" officer is still in charge, competent and efficient, and this article is not intended to criticise him in the least. The personnel of the court is not here being blamed for any unfortunate results; nor are the motives of the Governor herein mentioned, impunged or questioned. The writer is simply inspecting legal machinery and noting its operation in a specific case.

A section of the state constitution provides that the Governor may remove a state officer for incompetency, neglect of duty or malfeasance in office. The Supreme Court of Colorado, and some District Courts, have decided that the Governor may not enforce an order of removal by calling out the militia, but must resort only to the courts. He may, upon written charges and a hearing, issue an order removing an officer, and such order may be ignored by the removed officer until a District Court renders a judgment of ouster. The judgment may then be stayed until a supersedeas is granted, and the Governor's order remains disobeyed. The supersedeas stays the judgment until it is affirmed, and it may not be affirmed until long after the expiration of the term of office. Instead of the "speedy result" promised in Re Fire, etc., Commissioners, supra, the Governor finds that he has had no result whatever. In spite of hearings, trials, litigations, etc., the "removed" officer stays in office and collects the salary as if no removal had ever been attempted. So it seems that a constitutional provision may be rendered inoperative, and by the courts themselves.

FRANK SWANCARA.

Denver, Colo.

(6) Burkholder v. People, 60 Colo. 46, 152 Pac. 896.

AUTOMOBILES—WHEN OPERATED

PEOPLE v. DOMAGALA

206 N. Y. S. 288

(Erie County Court. October 8, 1924)

Starting motor for purpose of putting automobile into motion constitutes "operation of automobile," within Highway Law, § 290, subd. 3, prohibiting operating of automobile while intoxicated; that automobile was not put in motion, because motor was not powerful enough to force automobile over curb without stalling, was no defense.

Joseph Domagala was convicted of operating a motor vehicle while intoxicated, and he appeals. Affirmed.

William J. Bullion, of Buffalo, for appellant.

Guy B. Moore, Dist. Atty., of Buffalo (William H. Hartzberg, Asst. Dist. Atty., of Buffalo, of counsel), for the people.

NOONAN, J. From a judgment of conviction for violating section 290, subdivision 3, of the Highway Law (as added by Laws 1910, c. 374), which reads as follows: "Whoever operates a motor vehicle while in an intoxicated condition shall be guilty of a misdemeanor"—an appeal has been taken to this court.

About 3:30 p. m. two police officers found the respondent in an intoxicated condition, in his automobile, which was parked directly across the street, with the front wheels squarely against the curb. It is obvious that the judgment of conviction must stand or fall upon the construction given to the word "operate." Having in mind the meaning given

to "operate" in similar cases, the following definitions are applicable in this case:

"To put in action and supervise the working of: as *to operate a machine.*" 29 Cyc. 1496; Standard Dict. "Cause to move or perform the acts desired; as *to operate a machine.*" Cent. Dict. "To bring about a specified result." 29 Cyc. 1496.

The respondent started his motor six different times, and every time, when he attempted to throw it into gear, the motor stalled. Counsel for the respondent insists that the law was not violated until or unless the automobile was moved along the street. This claim is clearly untenable. Under any of the above definitions, the respondent began to violate the law the instant he began to manipulate the machinery of the motor for the purpose of putting the automobile into motion. The fact that the motor was not powerful enough to force the automobile over the curb without stopping is no defense.

The judgment of conviction is affirmed. Let an order be entered accordingly.

Ordered accordingly.

NOTE—*When Is an Automobile "Operated?"*—A motorcycle being pushed along a public highway is not being "operated" on the highway, within the meaning of the statute forbidding the operation of motor vehicles on the highways unless registered as required by statute. Norcross v. Roberts Co., 239 Mass. 596, 132 N. E. 399.

An ordinance requiring motor vehicles "operated or driven" on the public streets, between certain hours, has no application to a standing automobile. Harlan v. Kraschel, 164 Iowa 667, 146 N. W. 463. There is a similar holding in the case of State v. Bixby, 91 Vt. 287, 100 Atl. 42.

However, in Massachusetts a statute which prohibited the operation of automobiles between certain hours without lights therein specified, was held to be violated by one who left his automobile standing in a street without lights during such time and with the engine stopped. Com. v. Henry, 229 Mass. 19, 118 N. E. 224. This case, and the case of Stroud v. Hartford, 90 Conn. 412, 97 Atl. 336, in effect hold that the word "operation" must include such stops as motor vehicles ordinarily make in the course of their operation.

In the case of Hasner v. Youngs, 212 Mich. 508, 180 N. W. 409, it is said:

"Thus it will be seen that both the words 'operated' and 'driven,' when used in a statute of this character, have had judicial interpretation. We are constrained to adopt the more liberal construction and to hold that the statute applies even though the automobile is temporarily standing in the prohibited portion of the highway and not under motion."

There is a similar holding in Jaquiph v. Worden, 73 Wash. 349, 132 Pac. 33, 48 L. R. A. (N. S.) 827.

ITEMS OF PROFESSIONAL INTEREST

DISPUTED TYPEWRITING

The most notable case of disputed typewriting that has ever been in the courts was concluded at Saginaw, Mich., on October 22, 1924. A claim of 25 per cent interest in the immense estate of Wellington R. Burt, who died in 1919, was based on a typewritten document dated May 15, 1880. The amount of the claim, if it had been successful, would have been determined by an accounting and was estimated to have been all the way from five to ten million dollars. The trial had a dramatic ending. After the expert testimony of Albert S. Osborn, of New York, and without cross-examination, the three claimant's attorneys in this important case went to the judge and said that they were convinced that the document was fraudulent and would consent to the entering of a decree.

The attack upon the typewriting of the document was on two grounds. The first of these was that the document was not in harmony with the typewriting of 1880, and on the second ground, that the document was actually written on an L. C. Smith typewriter, which machine was first made in 1905, and on which the type was modified in 1911, so that the document could not have been written until actually thirty-one years after its date.

For more than twenty-five years Mr. Osborn has been at work on a history of the type faces of all typewriters, and this material was of great value in this case. The history of the type faces on the Remington machine from the beginning was part of the evidence, as was also the history of the L. C. Smith typewriter. Specimens of work on these machines of every year since their manufacture were put in evidence, and the proof was so conclusive that it ended, as already stated, by the admission of opposing counsel that the document was fraudulent. The document was also attacked on the ground that the signatures were forgeries.

One of the interesting details in connection with the proof of the typewriting in this legal case was the showing that the document had seventy-one characters or spaces on certain lines and that it was impossible for the early typewriters to write this length of line. Another interesting circumstance developed and illustrated was that at the beginning of typewriting the present established line spacing of six to the inch had not been adopted, but was adopted later, and this particular document not only showed the length of line that could not have been written in 1880 but the line spacing that was not adopted until a later period.

It is fortunate for the interests of justice that proof of this kind can be made. The typewriter companies co-operated in this matter and were prepared to present definite proof regarding the development of their machines if this had been necessary.—Typewriter Topics.

MOTORISTS AND MANSLAUGHTER

The following item, taken from the Solicitors' Journal, an English legal publication, suggests one reason why the English are less criminal than we. It shows that in England the laws are enforced. Does any reader think that the Doctor would have been sentenced to jail had he committed the same crime with the same attending circumstances in this country?

We regret that it should have been found necessary to inflict a sentence of nine months' imprisonment on Dr. Alexander Cameron, a Northampton doctor, for manslaughter, committed by the reckless driving of a motor-car, but we cannot help feeling that the offence is due more to the vitiated opinion of many motorists, which regards excessive speed on the highway as not culpable, provided there is no obvious danger in view. The law is quite clear that no motor-car or motor-cycle may exceed the limit of twenty miles per hour, and excessive speed is the cause of nearly all motor accidents. In order to comply with the law the speed must be kept well within the limit. It may be that some laws become obsolete by general acquiescence in their non-observance. That is not so with the speed limit which the law provides for this class of traffic. It is essential for the safety and amenity of the high road, and somewhat tardily magistrates and the police authorities are discovering the extent of the nuisance and peril which they have allowed to grow up owing to their neglect to enforce the law strictly. There appeared in The Times of 23rd September, a statement of the increase in the number of accidents due to negligent driving, and this was used as an argument for requiring a test of efficiency in driving. The Manchester Watch Committee have, we notice, so far stirred the Ministry of Transport out of its indifference, that it has undertaken to attempt to procure such a test. But, in fact, this will have but a trifling effect on the conduct of motorists. Of those of whom we read in the press as being involved in accidents, and whom anyone can see for himself on the high road, there are, we imagine, few who could not pass a test of efficiency. The mischief is due not to inefficiency, but to the selfish lust of speed which brings no small proportion of motorists within the criminal law. Lord Sumner made some pertinent observations on the subject at the dinner of the British Science Guild last May (Times, 23rd May). He doubted whether mankind was any better for the motor-car. What advantage there was in scurrying along at twice or three times the rate of speed that did well for people before its discovery, he was unable to conjecture. In time, doubtless, no car will be allowed on the high road which is capable of exceeding a moderate speed limit, and motor racing, which, as one continually sees, leads to the useless sacrifice of life, will be stopped. Till then we must expect to see persons who, like Dr. Cameron, are in ordinary life quite useful members of society, stand in a criminal dock and expiate in prison the crime which the general breach of the law has encouraged them to run the risk of committing.

BOOK REVIEWS

THE MSS. OF SALMOND ON TORTS

A graphic story, for the truth of which the Editor of the Law Quarterly Review vouches, is told in the last number of our quarterly contemporary. It relates to one of the half-dozen most famous and commercially successful law books which have been written in our time, namely, the late Sir John Salmond's treatise on the Law of Torts. This work shares with Sir Frederick Pollock's classic a position of joint-sovereignty amongst treatises on this all-important branch of law with which it deals. Yet when it was written quarter a century ago, and offered to a firm of law publishers for £100, the offer was refused. In the event the author could only get his book published at his own expense. Years afterwards, when the book had reached into its tens of thousands, the surviving partner—not the member of the firm who had taken that malprophetic decision—had occasion to send to its author his annual cheque for profits on sales. He used forcible language of malediction at the head of his former senior partner, and he used it not unnaturally, for the cheque represented a sum many multiples of that for which the copyright could originally have been acquired. What, however, is the moral? It is not fair to blame publishers, especially law publishers, because they fail to see the academic merit and the probability of commercial success—two merits which seldom go together—in some work submitted by an unknown author. Here, as elsewhere in life, the really shrewd appraiser of the as yet "unarrived" takes risks which more cautious spirits re-

fuse, and either succeeds or finds his firm in the bankruptcy court. To estimate aright original merit is the hardest of all things.—Solicitors' Journal (Eng.).

OWEN'S LAW QUIZZER

The Fifth Edition of Owen's Law Quizzer has recently been issued by the West Publishing Company. The author of the book is Mr. Wilbur A. Owen, LLM., of the Toledo, Ohio, Bar.

In this edition there are fifteen subjects thoroughly revised, and three new subjects added. There is a total of thirty-two pages, which include Federal Procedure and brief making. The book contains over 3000 questions and answers, occupying 722 pages, exclusive of an extensive index which covers 100 pages. The book is nicely bound in red flexible binding. It is pocket edition in form and weighs twenty ounces. Little need be said in reference to the high standing of Owen's Quizzer, as it is well known to members of the profession and to law students.

PRINCIPLES OF CORPORATION LAW

Mr. William W. Cook, of the New York Bar, author of the well-known work of "Cook on Corporations," is the author of a book entitled the Principles of Corporation Law. The object of the book is stated by Mr. Cook in the preface as follows:

"This book is an experiment to condense, simplify and clarify the law, for the use of the lawyer, law student and layman.

In an article published in the Michigan Law Journal, in February, 1923, on the 'Law Book of the Future,' I proposed a new type of textbook, stating general principles with a few applications, and with foot-note references to elaborate text-books and to the decisions of the Supreme Court of the United States. This book has been written on that theory, the references being chiefly to the eighth edition of the author's six-volume work on corporation law, and to the decision of the Supreme Court. References to very recent decisions are also added."

The book is published by the Lawyers' Club, University of Michigan, at Ann Arbor.

UNITED STATES CONSTITUTION, ANNOTATED

The American Law Book Company, New York, has recently published a volume entitled the "United States Constitution, Annotated." The references are to the Corpus Juris-CYC system. It also contains the text of the Declaration of Independence, the Articles of Confederation, and the Ordinance of 1787. The book is not only a timely publication, but it is of the utmost value to students of the constitution, and to lawyers having to do with any constitutional questions.

The book contains 280 pages and is bound in green cloth.

THE LAW OF THE HONEYBEE

The American Honey Producers' League, Madison, Wis., in co-operation with the American Bee Journal and Gleanings in Bee Culture, have issued a book containing a total of eighty-eight pages entitled "A Treatise on the Law Pertaining to the Honeybee." It is prepared by the Legal Department of the American Honey Producers' League, of which Mr. Colin P. Campbell, LLM., is general counsel. As a description of the contents of the book, we can do no better than to quote the preface written by Mr. Campbell:

"The effort has been made in the pages of this little book to bring together all of the law of the English-speaking world which relates to the honeybee. To this end the reports of all courts of last resort have been examined for decisions affecting her status or the rights or liabilities of her owners as affected by the fact of her ownership.

"The volumes which contain the acts of Parliaments, Congresses and Legislatures have also been examined for legislative acts concerning her. The quantity of matter available which concerns so small a morsel of the animal kingdom is astonishing.

"No pains have been spared to make the work complete and the editors confidently claim that there is no fragment of law pertaining to the honeybee which is not contained herein unless the same has been completely buried in the mass of legislation on other subjects so as to lose its identity."

DIGEST

Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Assignment**—Chose in Action.—A chose in action not evidenced by writing may be assigned without writing, and, if debtor is aware of assignment and promises to pay assignee, latter may maintain action to recover debt.—Ogdon v. Washington Nat. Bank, Ind., 145 N. E. 514.

2. **Attorney and Client**—Transfer of Cause to Attorney.—Injured person's contract, transferring interest in cause of action to attorney in consideration of services, and precluding client from compromising the whole cause of action at any stage of the case, held not void as against public policy.—Gibson v. Texas Pac. Coal Co., Tex., 266 S. W. 137.

3. **Automobiles**—Due Care.—The presumption that one who lost his life in an accident exercised due care for his safety may be overcome by direct proof or by facts and circumstances which lead to the conclusion that due care was not exercised. Only where the evidence of contributory negligence leaves no room for an honest difference of opinion among reasonable men is it permissible for the court to direct a verdict for the defendant. Plaintiff's intestate, on entering a street intersection, had the right to assume that the driver of defendant's truck would not violate the law of the road or drive in a negligent manner. The evidence warranted the jury in finding in plaintiff's favor on the issue of contributory negligence.—Klare v. Peterson, Minn., 200 N. W. 817.

4.——Railroad Crossing.—Where at point 25 feet from track, truck driver had unobstructed view of 3,200 feet in direction of train's approach, and at 60 feet he could see 525 feet in such direction, in driving onto tracks where he was struck by train traveling slowly, he was contributorily negligent.—Fisher v. West Jersey & S. S. R. Co., N. J., 126 Atl. 649.

5. **Bankruptcy**—Proof of Claims.—The provision of Bankruptcy Act, § 57n (Comp. St. § 9641), that claims shall not be proved subsequent to one year after adjudication is for the benefit of creditors, and not of the bankrupt, and where a fund remains in the hands of the trustee after payment of all proved claims in full, a creditor whose debt was scheduled, but not proved, within the year, is entitled in equity to payment from such fund.—In re Lenox, U. S. D. C., 2 Fed. (2d) 92.

6.——Trivial Claims.—That claims against bankrupt were trivial in amount was not ground for not enumerating them as outstanding claims against bankrupt, on petition by single creditor, in absence of proof that they were kept alive to prevent creditor bringing petition against bankrupt.—In re Alden, U. S. D. C., 2 Fed. (2d) 61.

7. **Banks and Banking**—"Due Presentment."—Where check was sent to Federal Reserve Bank for collection, its act in sending check direct to drawee bank was a "due presentment" for payment within Rev. Code 1921, § 8468 (Uniform Negotiable Instruments Law, § 61).—Jensen v. Laurel Meat Co., Mont., 230 Pac. 1081.

8.——Liability of Pledgor of Stock.—Provision of Laws 1917, p. 290, § 35, declaring person pledging bank stock shall be deemed stockholder and releasing pledgee from stockholder's liability does not violate Const. art. 12, § 11, relating to liability of stockholders.—Duke v. Madill, Wash., 230 Pac. 631.

9.——Misappropriation by Bankrupt.—Where the president of bankrupt corporation and its treasurer, who was also vice-president of a bank which held the president's personal note, without authority signed a check of bankrupt in payment of the note, for which bankrupt received no consideration, its vice-president in such transaction acted for the bank, which is chargeable with notice of the facts, and must be required to credit the payment on an indebtedness of bankrupt to it.—Wallace v. Ohio Valley Bank, U. S. C. C. A., 2 Fed. (2d) 53.

10.——Proceeds From Mortgaged Chattels.—When a bank receives the proceeds of a sale of chattels on which a third party held a valid first mortgage, with knowledge that the sale was made without the consent of the mortgagee, and that the ownership of the deposit is in the mortgagee, it is liable to the mortgagee for the sum deposited, and, if the bank becomes insolvent before paying the same, the mortgagee may enforce payment from the guaranty fund.—State v. Brown County Bank, Neb., 200 N. W. 866.

11. **Bills and Notes**—Holder in Due Course.—Merely transferring the proceeds of the note to the transferor's account is not payment of such proceeds, and will not in itself make the bank a holder for value when after non-payment of the note at maturity the proceeds remain to the credit of the transferor's account.—Merchants' & Mechanics' Sav. Bank v. Haddix, W. Va., 125 S. E. 862.

12.——Negotiable.—Note is not rendered non-negotiable because providing if not paid at maturity, for payment of attorney's fee and all costs of collection; the terms "costs of collection" and "attorney's fee," as used in Rev. Codes 1921, § 8409, being synonymous, and the use of both imposing no greater burden on maker than use of either alone.—Wood v. Ferguson, Mont., 230 Pac. 592.

13.——Right to Transfer.—Lawful holder of note has right to transfer it, which cannot be attacked by maker nor collaterally attacked by persons not parties to instrument.—In re Martin's Estate, Mo., 266 S. W. 750.

14. **Brokers**—Sale by Owner.—Where brokers were unable to complete sale because owner, before expiration of sole agency contract, conveyed premises to another, broker's remedy was action for breach of contract for damages, including expenses actually incurred and profits lost on sale they would have made, and not commission on sale by owner at higher price.—Slattery v. Cothran, N. Y., 206 N. Y. S. 576.

15. **Carriers of Passengers**—Admissible Evidence.—Under the peculiar claim of plaintiff, it was proper, in the discretion of the trial court, to receive in evidence proof of a collateral fact, to-wit, that no other claim for damages arising out of the accident was made.—Sullivan v. Minneapolis St. Ry. Co., Minn., 200 N. W. 922.

16. **Certiorari**—Right of Supreme Court to Issue.—Legislature cannot deny Supreme Court right to issue common-law certioraris to test jurisdiction of subordinate tribunals, in view of Const. art. 5, § 3, but, when providing new statutory remedies, may deny right of appeal by certiorari or otherwise, to review judicial rulings on incidental points.—In re Twenty-first Senatorial District Nomination, Pa., 126 Atl. 566.

17. **Commerce**—Taxing Canneries.—Laws Alaska 1921, c. 31, § 1, subd. 8, as amended by Laws 1923, c. 101, imposing license tax on canneries, is not invalid, as interfering with interstate commerce, as applied to foreign corporation canning fish for purpose of transportation and sale outside Alaska. —Pacific American Fisheries v. Territory of Alaska, U. S. C. C. A., 2 Fed. (2d) 9.

18. **Constitutional Law**—Attorney's Fee.—Section 7482, Comp. Stat. 1921, providing that in an action brought to enforce any lien the party for whom judgment is rendered shall be entitled to recover a reasonable attorney's fee to be fixed by the court, which shall be taxed as costs in the action, is not unconstitutional on the ground that it denies defendant the equal protection of the law, and does not violate section 59, article 5, of the Constitution.—Ardmore Hotel Co. v. J. B. Klein Iron & Foundry Co., Okla., 230 Pac. 734.

19.——Service on Solicitor.—Newspaper publisher in another state was not engaged in business within state because it sent mere solicitor into state for purpose of calling upon parties who handled newspaper, and service upon such solicitor was not good under Civ. Code Prac. § 51, subsec. 6, and did not constitute due process of law, under Const. U. S. Amends. 5, 14.—Tennessee Pub. Co. v. C. L. Walker & Co., Ky., 266 S. W. 941.

20. **Contracts**—Payable in "Francs."—Where principal and interest of American railroad bonds were payable in "francs" in Paris, or at holder's option in Belgium or Switzerland, held that holder's option related to place of payment only, and coupons were payable in French currency only; "franc," in common speech, denoting French currency.—Levy v. Cleveland, C., C. & St. L. Ry. Co., N. Y., 206 N. Y. S. 261.

21.——Restraint of Trade.—Agreement by an employee that after termination of contract that he would not engage in undertaking business in city or vicinity for 10 years was not, as matter of law, invalid, as unreasonable restraint of trade; "vicinity" being intended to include territory in immediate neighborhood of city where undertaker would be in competition with employer.—Chandler, Gardner & Williams v. Reynolds, Mass., 145 N. E. 476.

22. **Corporations**—Authority of General Manager. —Where the board of directors of a corporation fails to exercise control or supervision over the affairs of the company, and the chief stockholder, with titles of president, director and general manager, serving and acting as the sole and absolute manager and proprietor of the business, executes negotiable notes to the knowledge of the other directors and stockholders, without protest, to raise funds for the ordinary needs of the corporation, it will be estopped to deny his authority to execute a note for such purpose, on the ground that no express authorization was given by the board of directors.—Charleston Nat. Bank v. Lemkuhl-Shepherd Co., W. Va., 125 S. E. 241.

23.——Interest Coupons.—Interest coupons, detached from bonds secured by mortgage before negotiation, and purloined by officer of corporate mortgagor, were not valid obligations against mortgagor.—Columbus Trust Co. v. Upper Hudson Electric & R. Co., N. Y., 206 N. Y. S. 368.

24.——Liability of Promoters.—Generally, where organization of corporation is only nominal and is never perfected, but project is abandoned, incorporators and promoters are liable, on general principles, to those purchasing and paying for stock, in absence of contract to contrary.—Alderman v. Thimgan, Colo., 230 Pac. 620.

25.——Owner of Entire Stock.—One person may own all the stock of a corporation, and yet that entity be entirely responsible for its affairs, as distinguished from the individual, though certain corporate action could not be taken without more stockholders.—Shreveport Drug Co. v. Jackson, U. S. D. C., 2 Fed. (2d) 65.

26.——Promoters' Fraud.—Even if transaction whereby stock of merchandise purchased by promoters was transferred to corporation subsequently organized was illegitimate and fraudulent, sellers were bound by it only if they were parties to fraud, or had such knowledge thereof as would charge them at law with being participants.—Slattery v. Harris, U. S. C. C. A., 1 Fed. (2d) 973.

27.——Repurchase of Stock.—Where contract of purchase of corporation's stock by its employee provided that he should have all income, dividends and accretions, and corporation might purchase stock when employment ended at par value, employee was entitled to proportionate share of undivided net earnings on repurchase on termination of employment in addition to par value.—Revloc Supply Co. v. Troxell, Pa., 126 Atl. 774.

28.——Stock as Collateral.—Where defendant corporation made loan on forged signature of plaintiff to note, and received as collateral thereto stock certificates previously deposited with defendant's broker and forged agreement pledging them as collateral, delivery of stock to defendant was not a pledge.—Marcottee v. Massachusetts Security Corporation, Mass., 145 N. E. 464.

29. **Covenants**—Building Restriction.—Where restriction in deed prohibited erection of building within 30 feet from street line, a dwelling house, the foundation of which extended back 30 feet from street, but the porch of which as part of building extended forward several feet from foundation, violated the restriction and would be restrained at grantor's suit.—Clough v. Mesnick, N. J., 126 Atl. 740.

30. **Damages**—Lost Profits.—In action for failure to accept motion picture films, where exhibitor alleged films delivered were unmerchantable and counterclaimed for money paid, and for damages for breach of agreement, evidence that defendant's patrons had complained of films, held admissible as showing their unmerchantability.—Aywon Film Corporation v. Hatch, N. J., 126 Atl. 637.

31. **Elections**—Challengers.—As there is no statute imposing on board of elections duty to recognize witnesses and challengers appointed for voluntary political organization, and as Gen. Code, § 4949, specifically enjoins board not to recognize party controlling committee not legally selected, mandamus will not lie, under section 12283, to require board to recognize such appointments.—State v. Farrell, Ohio, 145 N. E. 324.

32. **Electricity**—Defective Wiring.—One continuing to supply electricity to customer, with knowledge of defects in customer's appliances, is liable for consequences of such defective and dangerous appliances.—Alabama Power Co. v. Jones, Ala., 101 So. 898.

33.——Negligence.—A person or corporation using the dangerous agency of electricity is bound to exercise the highest degree of care, and it is negligence to place an uninsulated feed wire in the branches of trees adjoining a public school playground where such trees are of such nature as would attract children to climb them.—Laurel Light & Ry. Co. v. Jones, Miss., 102 So. 1.

34. **Eminent Domain**—Damages.—Owner of land taken by the United States for nitrate plant, under Act June 3, 1916, § 124 (Comp. St. § 3110b), Act July 2, 1917, as amended by Act April 11, 1918 (Comp. St. 1918, Comp. St. Ann. Supp. 1919, § 6911a), held entitled, under Const. Amend. 5, to value of land taken and damages inflicted by taking in such sum as would put him in as good position pecuniarily as he would have been if property had not been taken, but not entitled to damages to remainder of his estate caused by diminution in value because of uses to be made of adjoining lands of other owners, acquired for same purpose. —Campbell v. United States, U. S. S. C., 45 Sup. Ct. 115.

35. **Highways**—Lien Against State Fund.—Gasoline and kerosene, carried in trucks by motor company and delivered therefrom to sub-contractor's tanks, from which his trucks and machinery obtained their fuel supply, notwithstanding slight diversion in use of trucks without seller's knowledge, held to establish lien, under Acts 1917, c. 71, § 6, against fund retained by state highway department to insure payment of sub-contractor's materials, as materials used upon work, though an item for tires must be disallowed.—Hamblen Motor Co. v. Miller & Harle, Tenn., 266 S. W. 99.

36. **Husband and Wife**—Separate Estate as Surety.—A married woman may bind her separate estate as surety for her husband, and the extension of the time of payment of her husband's past-due indebtedness is a sufficient consideration to

support her contract as his surety for such debt. —Biltwell Tire & Battery Co. v. Book, Neb., 200 N. W. 868.

37. **Insurance**—Accidental Death.—To render injury unintentional and accidental under accident policy by reason of insanity of person who inflicted injury, his mind must be so diseased and deranged as to render him incapable of distinguishing right from wrong in relation to the particular act.—National Life & Accident Ins. Co. v. Hannon, Ala., 101 So. 892.

38.——"Business Use" of Automobile.—Automobile liability policy, covering automobile while being used for "private and pleasure purposes and all ordinary business uses, * * * except * * * transportation or delivery of goods or merchandise," excluded business transportation of goods only, and not transportation for friend without remuneration of buggy attached to insured's automobile; test of "business use" being whether profit is made directly or indirectly.—Juskiewicz v. New Jersey Fidelity & Plate Glass Ins. Co., N. Y., 206 N. Y. S. 566.

39.——Conversion.—Where policy issued in Tennessee provided for conversion into another form of policy bearing same date and issued at same age, on payment of difference between premiums paid and those required under converted policy, without re-examination, converted policy, issued to insured after his removal to Texas, did not become a Texas policy, subject to Rev. St. Tex. 1911, arts. 4746, 4950, 4972, providing for payment of 12 per cent damages and reasonable attorney's fees on insurer's failure to pay amount of policy within certain time after demand.—Aetna Life Ins. Co. v. Dunken, U. S. S. C., 45 Sup. Ct. 129.

40.——Double Indemnity.—Policy of life insurance providing for double indemnity for injuries resulting in death, while traveling as passenger on street car, etc., covered injuries while riding on fender of street car, if insured was accepted and treated as a "passenger."—Farber v. Mutual Life Ins. Co. of New York, Mass., 145 N. E. 535.

41.——Liability of Broker.—Broker or agent, failing to procure insurance on another's property as agreed, with view to compensation for services, will be held for resulting damages.—Canfield v. Newman, Tex., 266 S. W. 1052.

42.——New Location.—Industrial policy covering accidents in factory at designated location, which had been abandoned and employer's works transferred to new location without notice to insurer, did not, in view of provisions requiring changes in policy to be indorsed thereon and limiting liability to designated location, cover accident at new location.—Astrin v. East New York Woodwork Mfg. Co., N. Y., 206 N. Y. S. 524.

43.——Self-Inflicted Death.—Recovery for self-inflicted death could not be had under accident policy excluding liability for injuries intentionally self-inflicted, unless insured's mind was so far gone that he was unable to understand and know that act which he was committing would probably result in his death.—Anderson v. Standard Acc. Ins. Co., Ky., 266 S. W. 237.

44.——Taxicab Company.—Purpose of policy procured under Highway Law, § 282-b, as added by Laws 1922, c. 612, being to indemnify public, plaintiff, who recovered judgment for personal injuries against insured taxicab company, on which execution was returned unsatisfied, could enforce her claim against insurer, though judgment was procured on writ of inquiry after insured's default.—Devlin v. New York Mut. Casualty Taxicab Ins. Co., N. Y., 206 N. Y. S. 365.

45.——"Wholly Incapacitated."—Language of policy, "wholly incapacitated and thereby permanently and continuously prevented from engaging in any avocation whatsoever for remuneration or profit," means that disability must incapacitate insured, not merely from pursuing usual avocation, but from engaging in any avocation for remuneration or profit, whether actually profitable or remunerative.—Lee v. New York Life Ins. Co., N. C., 125 S. E. 186.

46. **Intoxicating Liquors—Seizure of Foreign Vessels.**—The Treaty between Great Britain and the United States of May 22, 1924, defines and exclusively determines the status of British vessels lying off the shore of the United States, and visited by boats from shore to obtain contraband liquor, and unless authorized by its terms such vessels are not subject to seizure.—The Frances Louise, U. S. D. C., 1 Fed. (2d) 1004.

47. **Joint-Stock Companies and Business Trusts**—Voluntary Association Organized Under Declaration of "Trust" Held "Partnership."—A voluntary association organized under a declaration of trust which provides for the holding of property by trustees for the benefit of the owners of assignable certificates representing the beneficial interests in the property, and which also purports to give to the trustees absolute management of the property, but further provides (1) for the association together of the shareholders in stated annual meetings at which the trustees are to be elected, and in special meetings to be called by the trustees or president; (2) that the shares may be increased or diminished only with the consent of two-thirds of the shareholders, and, if they be so increased, such increase shall be disposed of as the shareholders direct in meeting; (3) that the trustees may not mortgage or pledge any of the property except upon the approval of holders of two-thirds of the shares obtained in meeting; (4) that the shareholders by a two-thirds vote at any time may terminate or continue the trust prior to the time fixed, or beyond the period set out in the agreement; and (5) that the shareholders may at any time, in a meeting called for the purpose, amend the trust agreement in any way they desire, except as to the exemption of personal liability of the trustees, officers, and shareholders in the association, is a partnership and not a trust.—Marchulonis v. Adams, W. Va., 125 S. E. 340.

48. **Landlord and Tenant**—Cash Deposited as Security.—Deposit of cash with lessor as security for performance of lease created pledge which gave right to lessor to retain fund until it was released by full performance, and lessor's right was unimpaired by bankruptcy of pledgor, despite Bankruptcy Act, §§ 63, 68 (Comp. St. §§ 9647, 9652).—Reed v. Bristol County Realty Co., Mass., 145 N. E. 455.

49.——Opening in Sidewalk.—Duty devolves on owner or lessee, who maintains opening in highway, such as coal hole or cellarway, with doors or gratings even with public way, to keep such opening safe for pedestrians who exercise ordinary care.—Schweizer v. Willard, N. Y., 206 N. Y. S. 356.

50. **Licenses**—Gasoline Tax.—Gasoline tax imposed on dealer, and measured by volume of business without regard to amount of gasoline on hand, is not ad valorem tax or tax on property, and does not come within requirements of Const. art. 10, § 4, requiring property to be taxed in proportion to its value.—Viquesney v. Kansas City, Mo., 266 S. W. 700.

51. **Master and Servant**—Course of Employment. —Injuries to bricklayer, received while being transported to work in employer's automobile, from collision with another automobile, held as matter of law, not to arise out of and in course of his employment, in view of Workmen's Compensation Law, § 10.—Pierdiluca v. Benedetto, N. Y., 206 N. Y. S. 358.

52.——Death of Minor.—A parent, who consents to employment of his child under the age of 16 years in a coal mine, is not precluded from recovery as the sole beneficiary, if the accident causing the death of the child in the mine is the result of negligence of the employer for which recovery could be had if the employment had been legal. He cannot recover if the unlawful employment is the proximate cause of the death of the child.—Wills v. Montfair Gas Coal Co., W. Va., 125 S. E. 367.

53.——Reasonable Care.—Truck driver's duty is to exercise reasonable care to avoid injury to invitee, and not merely to refrain from willfully injuring him.—Great Southern Lumber Co. v. Hamilton, Miss., 101 So. 787.

54.——Steeple Jack as Contractor.—Where steeple jack engaged to do work on smoke stacks furnished necessary tools, engaged and paid his own assistants, worked in his own way, without supervision, and had contract for the job, so that he could neither have been discharged nor have terminated

employment at his pleasure, he was contractor, and not employee, within Workmen's Compensation Act.—Marion Malleable Iron Works v. Baldwin, Ind., 145 N. E. 559.

55. **Mortgages**—Crops.—Under marketing agreement providing that if grower placed mortgage on crop co-operative association had right to take delivery of tobacco, and pay off all or part of mortgage, and charge grower's account, held that association was entitled to delivery of crop, though it refused to take mortgage or advance money, and crop was mortgaged to a third party.—Redford v. Burley Tobacco Growers' Co-Op. Ass'n, Ky., 266 S. W. 24.

56. **Nuisances**—Violation of Zoning Ordinance.—Business of retail dealer in ladies' wearing apparel, established in exclusive residence district, in violation of zoning ordinance, maximum penalty for which was fixed by Act No. 143, of 1898, held public nuisance, being defiance of municipal government.—City of New Orleans v. Liberty Shop, La., 101 So. 798.

57. **Physicians and Surgeons**—Dislocated Jaw.—The doctrine of res ipsa loquitur cannot apply to dislocation of jaw during tooth extraction, when there is evidence that dislocation of the jaw may occur when a tooth is being extracted with proper care.—Hill v. Jackson, Mo., 265 S. W. 859.

58. **Railroads** — Excavation. — Where plaintiff, while traveling in automobile on road used by public, skidded and ran on defendant railroad's land and was injured by falling into unguarded excavation, defendant's negligence was proximate cause of injury.—Goldstein v. Southern R. Co., N. C., 125 S. E. 177.

59.——Place of Delivery.—Under the provision of a uniform bill of lading that, if property is not removed by the consignee within 48 hours after notice, it may be kept in the car depot or "place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage," or removed and stored in a public warehouse, the "place of delivery" meant is either the unloading platform or some other place customarily used for the delivery of freight, and calculated, by reason of its character, location, supervision or care to afford protection against the usual hazards to unstored or unguarded property.—Chicago Great Western R. Co. v. Davis, U. S. D. C., 1 Fed. (2d) 729.

60. **Removal of Causes**—Separate Controversy.—A suit against a contractor, who is a citizen of the same state as plaintiff, and the surety on his bond which is a citizen of another state, does not involve a separate controversy, which makes it removable by the surety, nor does the fact that the contractor has been adjudicated a bankrupt eliminate him as an interested party, and render the controversy one solely between plaintiff and the surety.—Uden v. Great Northern Const. Co., U. S. D. C., 1 Fed. (d) 743.

61. **Sales**—Indefinite Prices.—Where defendant contracted with plaintiff for the purchase of prunes, to be shipped during the coming season, "firm at seller's opening prices," while the contracts as made were indefinite as to prices, notification by plaintiff at the beginning of the season of opening prices of all grades, to apply to all the contracts, and its acceptance by defendant, rendered all definite and binding.—California Prune & Apricot Growers v. Wood & Selick, U. S. D. C., 2 Fed. (2d) 88.

62.——"Suitable for Use."—Contract of sale of insulators, poles and other equipment, for use in construction of electric power line, requiring such equipment to be "suitable for use" in such line, and "acceptable for that purpose" to power company, required merely equipment acceptable or satisfactory to a reasonable man.—Ragsdale v. Dyer, Tenn., 266 S. W. 91.

63. **Seaman**—Employees on Dredge.—A dredge employed in deepening channels in navigable water is a "vessel," and persons employed thereon are "seamen," within the meaning of Comp. St. § 8392, and entitled to liens for their wages.—The Hurricane, U. S. D. C., 2 Fed. (2d) 70.

64. **Sunday**—Sale of Drinks.—An ordinance of town of Faith prohibiting sale of drinks on Sunday, although construed to include sale of soft drinks in connection with meals or lunch, was not an unreasonable and unwarranted exercise of police power, and is therefore valid.—State v. Weddington N. C., 125 S. E. 257.

65. **Taxation**—Idle Mill.—In determining whether or not a mill is idle and no longer subject to gross production tax and subject to ad valorem tax, the facts and circumstances as to the operation and the last payment of gross production tax, the facts as to intention and good faith to continue operation or to abandon the plant, and the rule of reason applied in the particular case as announced in Pelham Petroleum Co. v. North, 78 Okl. 39, 188 P. 1069, are all to be considered in the particular case.—Skelton Lead & Zinc Co. v. Harr, Okla., 230 Pac. 691.

66.——Income From Foreign Corporation.—Revenue Act Nov. 23, 1921, imposing income tax on net income of domestic corporation, though part is derived from foreign business, and though foreign corporations doing business within country are required, under sections 217, 233 (Comp. St. Ann. Supp. 1923, §§ 6336⅛hh, 6336⅛p), to pay tax only on that part of income derived from business done within the country, held not violative of due process clause of Fifth Amendment.—National Paper & Type Co. v. Bowers, U. S. S. C., 45 Sup. Ct. 133.

67.——Gasoline Tax.—Although C. L. § 3660 et seq., imposing a tax on sale of petroleum products used in propelling motor vehicles, does not expressly designate persons or class of persons upon whom tax is levied, it being an excise and indirect tax, by implication tax is imposed upon dealers who sell or offer to sell products, and seller may compel buyer to reimburse him therefor; and amendment of 1923 (Laws 1923, p. 474) is to the same effect.—Miller v. People, Colo., 230 Pac. 603.

68. **Workmen's Compensation**—Construction of Tunnel.—Employee, who received fatal injuries while working on construction of tunnel connecting state of New York and New Jersey under Hudson River at point between bulkhead line on New York side and middle of stream, was not in territory solely under jurisdiction of federal government, and was not engaged in "interstate commerce," and New York Workmen's Compensation Law was therefore applicable.—Sullivan v. Booth & Flinn, N. Y., 206 N. Y. S. 360.

69.——Course of Employment.—Where employee leaving work by private way over railroad track which employer was licensed to use and kept in repair, and which was only means of egress to street, was killed in collision with locomotive, the accident was in course of his employment within Workmen's Compensation Act, § 11.—Roberts' Case, Me., 126 Atl. 575.

70.——Incidental to Employment.—Employee's use of wharf or slip as place to wash hands, held not within or incidental to his employment.—Healy's Case, Me., 126 Atl. 735.

71.——Loss of Eye.—Workmen's Compensation Act, § 73, as amended by Laws 1923, p. 740, and section 75, authorizes compensation for both loss of sight of one eye and disfigurement, in case of total loss of eyeball, but does not authorize greater award for total loss of eyeball of eye already blind than for total blindness of one eye.—London Guarantee & Accident Co., Limited, v. Industrial Commission of Colorado, Colo., 230 Pac. 598.

72.——Railroad Watchman.—Railroad watchman, who was shot and killed by person whom he discovered stealing coal from car which had not reached its destination in interstate commerce, met his death in interstate commerce.—Dade v. New York Cent. R. Co., N. Y., 206 N. Y. S. 519.

73.——Teamster.—One hauling and delivering lumber to purchasers, at $3.50 to $4 per thousand feet, as measured by sawmill's representative, who gave specific instructions as to lumber to be hauled, and as to delivery, held not independent contractor, but servant, within workmen's compensation statute, though he furnished his own wagon and team.—Burt v. Davis-Wood Lumber Co., La., 102 So. 87.

74.——Wife as "Wholly Dependent."—Wife, who was justified in her separation from husband because of cruel and inhuman treatment, was wholly dependent upon husband for support as a matter of law, within Workmen's Compensation Act, under Burns' Ann. St. 1914, § 7869, and Burns' Ann. St. Supp. 1921, § 8020vi.—Messmore v. Madison Glue Mfg. Co., Ind., 145 N. E. 556.